

1 IN THE UNITED STATES DISTRICT COURT  
2

3 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
4

5 JOSE M. COMPOS and MARTHA E. COMPOS;  
6 DAVID-WYNN MILLER; SYNTAX,

No. C 11-00480 CW

7 Plaintiffs,

ORDER DISMISSING  
PLAINTIFFS'  
ACTION FOR  
FAILURE TO  
PROSECUTE

8 v.

9 JPMORGAN CHASE NATIONAL ASSOCIATION  
BANK; MORTGAGE ELECTRONIC  
REGISTRATION SYSTEM, INC.,

10 Defendants.

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13 On March 10, 2011, Defendant JPMorgan Chase Bank, N.A. moved  
14 to dismiss the Complaint filed by Plaintiffs Jose M. Campos, Martha  
15 E. Campos, David-Wynn Miller, and Syntax.<sup>1</sup> Docket No. 9. A  
16 hearing on the motion was set for May 5, 2011. Pursuant to Local  
17 Rule 7-3(a), Plaintiffs' opposition to the motion was due by April  
18 14, 2011, but Plaintiffs failed to oppose by that deadline.

19 On April 27, 2011, the Court issued an order requiring  
20 Plaintiffs to file their opposition by May 4, 2011. Docket No. 15.  
21 In that order the Court also noted that Plaintiff's complaint was  
22 unintelligible, and stated that Plaintiffs were required to file an  
23 intelligible opposition or their action would be dismissed for  
24 failure to prosecute.

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27 <sup>1</sup>The Court notes that while Plaintiffs Jose M. Campos and  
28 Martha E. Campos are listed with the surname Compos, the deed of  
trust attached to their complaint indicates that their surname is  
Campos. Compl. at 22. Accordingly, the Court refers to Plaintiffs  
by the surname Campos.

1       At the same time, Plaintiffs submitted a second unintelligible  
2 filing to the Court. Docket No. 16. On April 29, 2011, the Court  
3 issued an order noting that the submission could be Plaintiffs'  
4 opposition, but that it was unintelligible. Docket No. 17. The  
5 Court reiterated that Plaintiffs were required to file an  
6 intelligible opposition to Defendant's motion to dismiss by May 4,  
7 2011, or face dismissal of their action for failure to prosecute.

8       Plaintiffs have failed to comply with the Court's order to  
9 submit an intelligible opposition. Therefore, Defendant JPMorgan  
10 Chase's motion to dismiss is granted, Docket No. 9, and Plaintiffs'  
11 action is dismissed without prejudice for failure to prosecute.  
12 Docket No. 9.

13       Defendant Mortgage Electronic Registration System, Inc. (MERS)  
14 did not join Defendant JPMorgan Chase's motion to dismiss and has  
15 not appeared in this case. Although MERS is not a party to  
16 JPMorgan Chase's motion, it is similarly situated and entitled to  
17 dismissal of the complaint against it. Silverton v. Dep't of  
18 Treasury, 644 F.2d 1341, 1345 (9th Cir. 1981) ("A District Court  
19 may properly on its own motion dismiss an action as to defendants  
20 who have not moved to dismiss where such defendants are in a  
21 position similar to that of moving defendants or where claims  
22 against such defendants are integrally related."). Plaintiffs'  
23 unintelligible complaint fails to comply with Federal Rule of Civil  
24 Procedure Rule 8, which requires a "short and plain statement of  
25 the claim showing that the pleader is entitled to relief," and "a  
26 demand for the relief sought." Allegations of federal question  
27 jurisdiction or diversity jurisdiction are indiscernible from

1 Plaintiffs' complaint. The complaint is silent as to the role of  
2 Plaintiffs David-Wynn Miller and Syntax in the dispute and, thus,  
3 fails to allege their standing to sue. In event that Plaintiffs  
4 have attempted to plead a claim for fraud, the allegations have not  
5 met the requirements of particularity under Federal Rule of Civil  
6 Procedure 9(b). MERS is not a party to the Deed of Trust attached  
7 to Plaintiffs' unintelligible complaint. These arguments JPMorgan  
8 has asserted are equally available to MERS.

9 In sum, Plaintiffs have failed to prosecute their action in  
10 response to JPMorgan Chase's motion to dismiss, and have submitted  
11 an indecipherable complaint that plainly violates Rules 8 and 9, in  
12 addition to insufficiently alleging grounds for this Court's  
13 subject matter jurisdiction. Accordingly, Plaintiffs' complaint is  
14 dismissed without prejudice.

15 IT IS SO ORDERED.

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17 Dated: 5/24/2011  
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CLAUDIA WILKEN  
United States District Judge

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UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

JOSE M. COMPOS et al,

Plaintiff,

Case Number: CV11-00480 CW

V.

JPMORGAN CHASE NATIONAL  
ASSOCIATION BANK et al,

Defendant.

## **CERTIFICATE OF SERVICE**

10 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

11 That on May 24, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies)  
12 in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in  
13 the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's  
office.

David-Wynn Miller  
5166 North 63  
Milwaukee, WI 53218

Jose M Compos  
33755 15th Street  
Union City, CA 94587

Martha E. Compos  
33755 15th Street  
Union City, CA 94587

Dated: May 24, 2011

Richard W. Wiekling, Clerk  
By: Nikki Riley, Deputy Clerk